

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DAVID MARQUAR

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:11-CV-00054-LG-RHW

**OFFICER CHRIS ALLEN , INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS A
DULY COMMISSIONED POLICE OFFICER
FOR THE CITY OF WAVELAND, MS, ET AL.**

DEFENDANTS

DEFENDANTS' MOTION TO FILE AN AMENDED MEMORANDUM

COME NOW, Defendants the City of Waveland, Mississippi, Chris Allen, James Varnell, and David Garcia (collectively, "Municipal Defendants"), by and through their attorneys of record, and respectfully submit this Motion to File an Amended Memorandum in Support of Summary Judgment. The Municipal Defendants would show as follows:

1. On October 31, 2012, the Municipal Defendants filed their Motion for Summary Judgment in this matter. Since then, as a result of conversations with Waveland city officials, it has become apparent that additional grounds for summary judgment exist, which were not addressed in the Memorandum in Support of the Motion for Summary Judgment. Specifically, it appears that Plaintiff's state law claims are barred because he did not submit notice to the city as required by the Mississippi Tort Claims Act (MTCA).

2. Municipal Defendants therefore respectfully request leave to file the Amended Memorandum attached hereto as Exhibit 1 in place of the memorandum initially submitted. The only change to the memorandum is the addition of a section of the argument addressing the MTCA notice requirement. Plaintiff has been informed of Municipal Defendants' request, but as

of this filing has not indicated whether it is opposed. Plaintiff has not yet filed a response memorandum on summary judgment and will not be prejudiced in his ability to respond.

3. This motion is not being filed for purposes of harassment or delay, but in order that the Court may be fully apprised of the legal issues affecting summary judgment in this case.

4. Given the straightforward nature of this request, the Municipal Defendants respectfully ask that the Court waive its requirement of a separate memorandum of law.

THIS, the 9th day of November, 2012.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/ W. Brett Harvey

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, BRETT HARVEY, do hereby certify that I have filed the foregoing *MOTION* via the CM/ECF system, which provided an email notice to the following individuals:

Bobby Moak
Law Office of Bobby Moak, PC
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P.O. Box 242
Bogue Chitto, MS 39629
ATTORNEY FOR PLAINTIFF

SO CERTIFIED, this the 9th day of November, 2012.

/s/ W. Brett Harvey
W. BRETT HARVEY